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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,319	05/25/2001	David S. Lemer	LER-1	4072
29847	7590	08/11/2005	EXAMINER	
BEUSSE BROWNLEE WOLTER MORA & MAIRE 390 N. ORANGE AVENUE SUITE 2500 ORLANDO, FL 32801			AU, GARY	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/865,319	Applicant(s) LERNER, DAVID S.	
	Examiner Gary Au	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>Oct 15, 2002</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(e) based upon a provisional application upon which priority is claimed. A claim for priority under 35 U.S.C. 119(e) cannot be based on said application, since the United States application was filed more than twelve months thereafter.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 3, 5-10, 15, and 18 are rejected under 35 U.S.C. 103(a) as being anticipated over US Patent No. 6,130,726 Darbee et al. (Darbee) and further in view of US Patent No 5,420,923 Beyers, II et al. (Beyers).

As to claim 1, Darbee teaches a method for collecting and storing data regarding the viewing habits of a user comprising the steps of: (a) storing user selections on a memory device (remote control unit 10 – figure 1, col. 10 lines 12-18); (b) transmitting user selections stored on the memory device over a network for storage on a further

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memory device (viewing habit data is sent to the content provider or host system, col. 10 lines 24-38); Darbee also teaches that content provider may tailor addition programming or advertisement according to the viewing habit data (col. 10 lines 24-38). Darbee does not teach a method for creating a statistical data base based upon the user selections.

In an analogous art, Beyers teaches that the system control computer (120 – figure 1 and 7) commands the subscriber terminals to transmit a record of the channels viewed by the viewers and stores the selections in the database (708 – figure 7, col. 36 lines 3-21). The system can easily access and process the data.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Darbee's system to include a statistical database, as taught by Beyers, for the advantage of accessing, evaluating, and processing the data easily.

As to claim 2, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches that the memory device is a controller for a television (remote control 10 – figure 1, col. 7 line 66 - col. 8 line 19).

As to claim 3, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches a remote controller (remote control unit 10 – figure 1, col. 6 lines 50-61).

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As to claim 5, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches that the data regarding said viewing habits is specific to a given viewer or location of viewing (col. 10 lines 12-23).

As to claim 6, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches that the data regarding said viewing habits is specific to the viewing habits of a viewer or group of viewers of television program content (col. 10 lines 12-23).

As to claim 7, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches that the data regarding said viewing habits is specific to the viewing habits of a viewer or group of viewers of content on the INTERNET (col. 10 lines 21-23).

As to claim 8, Darbee and Beyers teach the claimed limitation. In particular, Darbee teaches a remote controller of a television comprising hardware and software for accurately measuring the time period and providing an indication of the content of the material viewed (date and time stamps, col. 10 lines 12-46).

As to claim 9, Darbee and Beyers teach the claimed limitation. In particular, Darbee teaches an interactive system comprising a remote (10 – figure 1) to control a television which contains software and hardware known to track stations as the user

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selects different channels, such that the location and time spent at each location or channel is recorded for subsequent or simultaneous transmission of the viewing data to a server system (the data stored can be a data stamp, time stamp and/or channel identification data. The data is transmitted to the content provider or host system or a computer, col. 10 lines 12-38).

As to claim 10, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches that the data is directly transmitted by the remote to a computer for analysis of the data (the data is sent to a computer or content provider and then the data is used to tailor additional programming or advertisement, col. 10 lines 24-38).

As to claim 15, Darbee and Beyers teach the claimed limitation. In particular, Darbee further teaches that the data is directly and automatically transmitted by the remote to a computer via an IR receiver (col. 10 lines 24-32).

As to claim 18, Darbee and Beyers teach the claimed limitation. In particular, Darbee teaches a remote controller for a television which comprises hardware and software for recording channels and periods of time during which a viewer of the television or computer views content at said channel and wherein said remote is adapted for transmission of the recorded data to a computer system for analysis of said viewer data (see claim 9 and col. 10 lines 12-46).

4. Claims 4, 11-14, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,130,726 Darbee et al. (Darbee) in view of US Patent No. 5,420,923 Beyers, II et al. (Beyers) as applied to claims 1 and 9 above, and further in view of US Patent No. 6,104,334 (Allport).

Considering claim 4, Darbee and Beyers do not teach that the remote controller is placed into a cradle.

In an analogous art, Allport teaches that a remote controller is placed into a cradle (docking station) which optionally charges said controller, and which downloads stored information for simultaneous or subsequent transmission to a collector of said information (col. 28 lines 36-50). The docking station provides connection with a home PC.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Darbee and Beyers to include a docking station, as taught by Allport, for providing connection with a home PC and charging the remote control.

Considering claim 11, Darbee and Beyers teach the claimed limitation. In particular, Darbee teaches the transmission of the viewer's viewing history to a computer or content provider. Darbee and Beyers do not teach that the computer sends the data to the content provider via the Internet.

In an analogous art, Allport teaches that the remote controller is connected to the Internet by a home PC (col. 28 lines 23-59).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Darbee and Beyers to provide connection between the computer and the content provider via the Internet, as taught by Allport, for the advantage of gaining access to a widely and readily available source of information.

Considering claim 12, Darbee and Beyers do not teach that the remote controller is rechargeable and the cradle is adapted to recharge the remote.

In an analogous art, Allport teaches that the remote controller is rechargeable and the cradle (docking station) is adapted to recharge the remote (col. 28 lines 36-46).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Darbee and Beyers to enable the docking station to recharge the remote controller, as taught by Allport, for the advantage of recharging the remote controller.

As to claim 13, Darbee and Beyers do not teach that the cradle transmits the viewing history to a computer.

In an analogous art, Allport teaches that the cradle (docking station) provide connection with a home PC for information related to past programs viewed by particular users (col. 28 lines 38-50).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Darbee and Beyers to

enable connection between the docking station and a home PC, as taught by Allport, for the advantage of transmitting the viewing history.

As to claim 14, Darbee and Beyers teach the claimed limitation. In particular, Darbee teaches that the viewing history is transmitted to the host via a computer (col. 10 lines 24-32). Darbee and Beyers do not clearly teach that the computer would process the data and send the processed data to the content provider.

In an analogous art, Allport teaches that the computer is connected to the Internet. It is noted that the computer processes the viewing history and then sends the processed data to the content provider so that the content provider can distribute television programming or advertisements according to the processed viewing history (col. 28, lines 23-59).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Darbee and Beyers to process the viewing history by the computer and send the processed data to the content provider, as taught by Allport, for the advantage of requiring less processing at the content provider side and distributing television programming or advertisements according to the processed viewing history.

As to claim 16, see the rejection of claim 11.

As to claim 17, see the rejection of claim 13.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,130,726 Darbee et al. (Darbee) in view of US Patent No. 5,420,923 Beyers, II et al. (Beyers) as applied to claim 18 above, and further in view of US Patent No. 6,665,020 Stahl et al. (Stahl).

As to claim 19, Darbee and Beyers do not teach a remote controller adapted for use in connection with a digital video recorder.

In an analogous art, Stahl teaches a remote controller adapted for use in connection with a digital video recorder (VCR 12" – figure 4, col. 8 lines 1-27 and col. 9 line 60 – col.10 line 4). The VCR is a DVCR used to record video.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Darbee and Beyers to include a digital video recorder, as taught by Stahl, for the advantage of recording video.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 4,907,079 (Turner et al.) teaches a system for monitoring and control of home entertainment electronic devices. US Patent No. 5,973,683 (Cragun et al.) teaches a dynamic regulation of television viewing content based on viewer profile and viewing history.

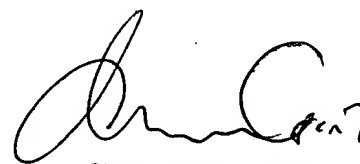
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Au whose telephone number is (571) 272-2822.

The examiner can normally be reached on 8am-4pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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